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ACA REPORT TO THE TENNESSEE DEPARTMENT OF CORRECTION

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Objective: The objective of this review was to conduct site visits at several Tennessee correctional facilities to provide a review of the following:

- general "safety" considerations
- staffing and overtime patterns and issues
- staff vacancy rates
- review of critical incidents files with emphasis on staff assaults
- interview staff and inmates

Facilities Visited: West Tennessee State Penitentiary; Northwest Correctional Complex; Riverbend Maximum Security Institution; Bledsoe County Correctional Facilities; and Lois DeBerry Special Needs Facility

Summary of Resumes of Participants – See Attachment I.

Report to the Tennessee Department of Correction:
The safety of the general public is at the heart of the mission of a correctional agency. It is a core function and priority of the Tennessee Department of Correction (TDOC). Evaluation of the effectiveness of the agency in meeting this critical measure of safety is the rate of escapes from the secure correctional facilities under its control. Our review of the department's performance in this area reveals sustained positive outcomes. There have been no escapes from secure custody since February 2009. There have been no escapes in the past 6 years. Other elements of correctional staff and inmate safety can be reflected in observable general operational characteristics. During its visits, the team determined that all 5 units visited, including the most secure and complex in the system, were consistently operationally disciplined, stable and productive in meeting their critical mission. Security checkpoints were adequately staffed and operated. (It was noted that an enhancement of the "zone officer" staffing and function to allow more time to be allocated by a third officer in the entrance areas of the medium housing units would be a positive step in enhancing staff safety and morale in the pod housing assignments. Such staffing appeared to be regularly available in the high custody housing areas.) Emergency response team members were assigned and present or available

on a 24-hour basis. It must also be noted that the sustained facility compliance with the operational standards of the American Correctional Association as set by its "standards committee" and administered by the "Commission on Accreditation for Corrections" is a primary indicator and measure of what can be characterized in the aggregate as sound correctional programs. The TDOC has been and remains accredited by the association and the commission, the only accreditation of complete facility operations that is available in America.

The team reviewed specific aspects of the current operational model of the department with particular emphasis on the recent conversion from a 7-day correctional officer work period to a 28-day correctional officer work period. In addition, incident reporting relative to inmate assaults on correctional officers was examined. These issues were defined as being most relevant to analysis of the factors raised in discussion with departmental staff before and during the visits.

In August 2014, the department began its conversion from a 7-day definition of the correctional officer work period under applicable FLSA regulations to a 28-day definition of the work period. The intent was to ensure that allocation of this critical manpower resource was done as efficiently and effectively as possible under existing federal law while at the same time undertaking recognition of the importance of equity in work assignments of correctional officers relative to weekend and holiday work shifts. As a collateral consequence of this initiative, two primary issues emerged as having problematic implications for the affected employee group:

1. The new system altered the method by which overtime was accumulated and paid. Under the 7-day work period structure, hours accumulated in excess of 40 during the 7 days were compensated at a rate of one and one-half times the regular rate and were due and payable to the employee in a 2 to 3 week period after they were worked. Under the revised 28-day work period, hours accumulated in excess of 160 during the 28-day period were compensated at a straight time rate for the first 11 hours worked after 160 hours and at the time and one half rate only after 171 hours had been worked, (a change from the previous model which paid time and one half for all these extra hours worked). In addition, the overtime hours were due and payable after a 6 to 7 week period rather than a 2-3 week period. The evaluation period to determine whether or not overtime hours had been accumulated for payment changed from 7 days to 28 days. The time lag between actually working the hours and being compensated for them changed from 2-3 weeks to 6-7 weeks. These factors contributed to concern on the part of the affected class of employees.

2. A gap exists in the offender disciplinary process and enumerated rules in the area of staff assaults. For an inmate to be charged with assaulting a staff member, the act must include the element of "intentional injury" to the staff member. Any action on the part of the inmate which does not include injury is usually classified as "Staff/Inmate Provocation." This rule was originally designed to encompass "intentionally or knowingly causing physical contact with staff or another inmate that a reasonable person would regard as offensive but which results in no injury." The historical context of this rule as interpreted by the team would contemplate its use to discipline incidental contact between the offender and the staff member and not assaultive contact. The result, however, of the requirement for intentional injury being present prior to the charging of an inmate for staff assault left assaultive non-injurious incidents as usually chargeable only under the provocation rule.

Recommendations:

The team offers alternative strategies to address these identified specific issues as follows:

— Change the 28 day FLSA exempt class work period from 28 days to 14 days.
— Change the 8 hour shift assignment to a 12 hour shift assignment.

In this manner, the overtime accumulation threshold would change from 28 days to 14 days. Each officer would work 86 hours per pay period and be compensated at straight time for 86 hours, (7 shifts @ 12 hours per shift and 7 roll-calls each of approximately 15 minutes in duration), and time and one-half after 86 hours per pay period. The overtime threshold would change from 28 days to 14 days, (A 50% reduction from the current practice). Double shifts would be eliminated. The number of times a correctional officer would be required to drive to and from the prison, often a considerable distance, would be reduced to 7 times every 2 weeks. The overtime payment time lag would be reduced by 2 weeks. Overtime which an employee volunteers to work could be assigned on the employee's regular days off, rather than as an extension of a work shift. It should also be noted that the work period adjustment as described would result in employees working a routine rotating fourteen-day schedule as follows:

Regular days off — Friday / Saturday / Sunday
Work days— Monday / Tuesday
Regular days off — Wednesday / Thursday
Work days — Friday / Saturday / Sunday
Regular days off — Monday / Tuesday
Work days — Wednesday / Thursday

Repeat cycle

Every correctional officer, except those assigned to a Monday-Friday 40 hour work week, would be off duty every other weekend for a 3-day period.

— Delete the following inmate rules from APR 502.05 "definitions of disciplinary offenses"
"3. Assault, assault on staff (Class A)"
"67. Staff/inmate provocation (Class B or C)"

—Add the following inmate rules to APR 502.05 "Definitions of Disciplinary Offenses"

"Staff assault with weapon (Class A)"
Offenders shall not assault any staff member, visitor or guest using any object as a weapon, including any liquid or solid substances thrown or otherwise projected on or at such person. The use of teeth will also constitute a violation of this rule. Contact does not necessarily have to be made for this rule to be violated.

"Staff assault without weapon (Class A)"
Hostile physical contact or attempted physical contact with a staff member, visitor or guest is not permitted. This includes hitting, shoving, wrestling, kicking and similar behaviors. Contact does not necessarily have to be made for this rule to be violated."

"Defiance (Class A or B)"

No offender shall curse, insult or threaten a staff member, visitor or guest in any manner. This prohibited conduct includes abusive or insulting conversation, phone calls or gestures by any offender. Further, no inmate shall obstruct, resist, distract or attempt to elude staff in the performance of their duties. Nor shall any offender intimidate or attempt to intimidate staff to manipulate staff's actions."

"Fighting with weapon (Class A)"

An inmate shall not assault any other inmate using any object as a weapon, including any liquid or solid substances thrown or otherwise projected at another inmate. The use of teeth will constitute a violation of this rule. Contact does not necessarily have to be made for this rule to be violated.

"Disorderly conduct (Class B or C)"

Staff, visitors and guests should be treated courteously and shall not be subjected to disorderly or intrusive conduct, including incidental touching. Boisterous and disorderly behavior is not allowed.

Revise the following rule in APR 2.05 "Definitions of Disciplinary Offenses":

"Fighting (Class A or B) —

Hostile physical contact or attempted physical contact with another inmate is not permitted. This includes hitting, shoving, wrestling, kicking and similar behaviors. Contact does not necessarily have to be made for this rule to be violated." (A, B)

Injury would no longer be a defining term in the disciplinary rules as it is not a final determinative factor in evaluating seriousness of the offense. Offense class, (A, B or C), would be added/amended as indicated.

Summary:

The ACA Team recognizes that change is often difficult, but also necessary. We recommend that changes as important as work schedules be implemented after all staff has the ability to adjust their family and personal schedules. New work hours impact families with or without children, can disrupt other part-time work and personal events, such as college, volunteer work and so on. We believe that management staff should meet in person with correctional staff and those affected by the work schedule changes, in order to explain the importance of these changes for the benefit of the State of Tennessee and the benefit of the staff. Ultimately, these changes are anticipated to positively affect outcomes relative to facility stability and safety as well as addressing staffing concerns relative to pay, overtime and scheduling issues.

Another important change, if implemented, is revision of the inmate disciplinary policy. This change, the ACA team believes, would clarify a policy that is confusing to some employees. It would also exemplify to staff that inmate negative behavior has results for corrective action. This change should also be explained to staff in person in order to enlist understanding and continued corrections team support.

Lastly, we appreciate the openness and ability to speak with employees and inmates in private during our visits. We commend the Commissioner and his staff for allowing any and all persons we spoke with to do so in private and in frank terms. We congratulate the entire staff of the Tennessee Department of Correction in ensuring, above all, public safety is maintained and justice is served.

ATTACHMENT I

Summary of Resumes of Participants

James A. Gondles, Jr., CAE, Executive Director, American Correctional Association - James A. Gondles, Jr. was selected the eighth Executive Director of the American Correctional Association in 1990. Mr. Gondles served full-time as Executive Director-Designate from October 1990 until October 1991, when he became the Executive Director. Mr. Gondles previously served as Sheriff of Arlington County, Virginia, having first been elected in 1979 and reelected in 1983 and 1987. He resigned the Office of Sheriff to assume his new duties at the American Correctional Association. From 1972 until his election as Sheriff, Mr. Gondles served as a deputy sheriff in Arlington County. A graduate of Oklahoma City University (B.A., political science) Mr. Gondles has also completed training at the Northern Virginia Criminal Justice Academy, the National Sheriffs' Institute and the National Academy of Corrections. He became a Certified Association Executive (CAE) by the American Society of Association Executives (ASAE) in 1999.

Richard L. Stalder, Secretary of Louisiana Department of Public Safety and Corrections (LDPSC) (Retired). In 1992, Mr. Stalder was appointed Secretary of the LDPSC—a position he held until his retirement in 2008. He began his corrections career in 1971 as a correctional officer while attending college. Following college graduation, he continued his corrections path within the Department as Training Officer I/II, Federal Programs Administrator, Corrections Budget Officer, Agri-Business Planning & Management Officer, and Superintendent of Louisiana Training Institute-Monroe. In 1981, he worked as the Executive Vice President of Doles Insurance Agency, but returned to LDPSC in 1985 as Deputy Warden of Dixon Correctional Institute and then as Warden of David Wade Correctional Center before assuming the Secretary's position. Stalder served as President of the American Correctional Association (ACA) from 1998-2000 and President of the Association of State Correctional Administrators (ASCA) from 2004-2006 and has served on many committees for both ACA and ASCA. He currently serves as Chair of ACA's Constitution and Bylaws Committee. Stalder is a member of the Board of Directors for the Louisiana Department of Corrections Credit Union and also is Chairman of the Finance Committee for the Union. He has been a member of several corrections and non-corrections related associations and commissions. He is and has been an expert witness for several court cases and was a consultant and trainer for such disciplines as the United States Army and the Saudi Arabian Corrections Delegation to the U.S. and many others. He is considered a subject matter expert in adult prisons, jails, juvenile correctional programs, community corrections programs and police lock-ups. Stalder has been a keynote speaker for several corrections-related organizations and associations and has moderated several corrections training events. He has authored several publications for ASCA, ACA and other organizations. Stalder is an active participant in his community and has received several honors and awards. He holds a M.S. (1978) and a B.A. (1973) both in Economics from Louisiana State University in Baton Rouge, and was an adjunct professor at Louisiana State from 1977 to 1978.

Luis S. Spencer, Former Commissioner, Massachusetts Department of Correction (Retired) and Past Chair, Commission on Accreditation for Corrections, American Correctional Association – Luis S. Spencer has 32 years of Correctional experience. In May 2011 he was appointed Commissioner of the Massachusetts Department of Corrections (MDOC)—a position he held for three and half years. He began his corrections career in the Corrections (MDOC) in 1980 as a correction officer. In 1982 he enlisted in the United States Air Force where he received an honorable discharge in 1985 as Sergeant. He returned to the MDOC as a correction officer and quickly advanced through the ranks from Sergeant to Deputy Superintendent. He was appointed Superintendent of MCI-Lancaster, and following this role, he was assigned to MCI Plymouth, Old Colony Correctional Center and MCI Norfolk, the state's largest facility. In 2008, he was promoted to Assistant Deputy Commissioner of the Southern Sector overseeing nine correctional facilities Superintendents and was later appointed Acting Deputy Commissioner of the Prisons Division. While serving as Commissioner for MDOC, he continually improved the performance of operations; led the department's efficiency and credibility by using "dialogue" as a method to advance a "leadership" model to encourage open communication between staff and inmates; maintained and promoted his department's strategic plan to ensure that both staff and inmates knew and understood the department's vision, mission, and core values as it related to the strategic plan; led his organization with the team concept in problem solving; and he led in the outreach efforts of the MDOC to utilize Social Media as a networking tool to the advance agency's agenda and communication with its stakeholders. Spencer was a member of ACA's Standards Committee, and was elected in 2012 by the ACA membership as a Commissioner for the Commission on Accreditation for Corrections, and ultimately was elected Chair of the CAC. He has also published articles in Corrections Today. He received a Criminal Justice Degree from Massasoit Community College and several certificates of completion relative to the criminal justice field.